being unjustified, there being no term in the contract that under such circumstances the plaintiff was entitled to payment of three months' salary as liquidated damages, what order should be made.

It is clear from the pleadings that the plaintiff's claim is based on his view that he is entitled to sue under the contract for three months' salary in lieu of notice commencing from the 18th March 1962. It is also clear from the pleadings that the defendants defended the action on the basis of that claim. In my view the plaintiff having relied solely on the contract and not put in an alternative claim for damages for wrongful dismissal he is not entitled to judgment on his claim having framed it on a wrong construction of the contract. In any event there being no evidence on his part that he had placed his services on the market and had failed to obtain any suitable employment, the plaintiff would at most have been entitled to nominal damages had it not been for the fact that he was paid his salary up to the 31st March, 1962.

For all these reasons therefore I would allow the defendants' appeal against the judgment in favour of the plaintiff on his claim and would uphold the judgment dismissing the defendants' counterclaim against the plaintiff.

Tan Ah Tah and **Buttrose JJ.** concurred.

Appeal allowed.

Solicitors:—*Hilborne & Chung; Drew & Napier.*

LIM CHIN HUAT v. REGINA

[A.Cr.J. (Buttrose J.) July 26, 1963]

[Singapore — Magistrate's Appeal No. 7 of 1963]

Criminal Law — Penal Code, s.420 — Cheating by tendering cheque—Cheque drawn by a third party and not by accused—Cheque subsequently dishonoured—Onus on prosecution to prove that accused knew that it would be dishonoured—Evidence of third party—Whether accomplice evidence.

For a conviction on a charge of cheating to be sustained in the case of the dishonour of a cash cheque tendered to the accused from a third party the prosecution must show that from the circumstances of the case it can be presumed that the accused was aware that the cheque would be dishonoured. In this case the conviction should be sustained because such evidence was supplied by the third party (the drawer of the cheque). However the third party was not an accomplice because he had no knowledge of the transaction between the accused and the complainant.

Case referred to:—

(1) *Tan Yook Suan* v. *R.* [1954] M.L.J. 116.

MAGISTRATE'S CRIMINAL APPEAL.

David Marshall for the appellant.

Francis T. Seow (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Buttrose J.: This is an appeal against a conviction for cheating. The charge against the appellant was as follows:—

"That you, on or about the 14th day of August 1962 at about 4.45 p.m. at No. 1 Brighton Crescent, Singapore, cheated one Low Chuck Song by deceiving him into believing that a Malayan Banking Limited cheque No. SB/RI 023085 for $6,750 tendered by you in payment for 45 sets of Philips Tape Recorders would be honoured and in so doing dishonestly induced the said Low Chuck Song to deliver to you 45 sets of Philips Tape Recorders valued at $6,750 which he would not have done had he not been so deceived and you have thereby committed an offence punishable under Section 420 of the Penal Code.

The prosecution case was, in substance, that this was a cash transaction for the sale of 45 sets of Philips tape recorders by Allied Radio Corporation, of which the complainant was the managing directors, to the appellant. The tape recorders were ordered by the appellant on the morning of the 14th August, 1962, and delivered that same afternoon between 4 and 5 o'clock.

A cash cheque for the sum of $6,750 also dated 14th August, 1962 was handed over by the appellant to the complainant immediately after the goods had been delivered. The cheque was drawn by a third party and the complainant at first refused to accept it because it was not drawn by the appellant. On receiving an assurance from the appellant, backed up by other statements, that the cheque would be honoured the complainant accepted it. On the following morning the 15th August, 1962, the cheque was presented to the Bank and dishonoured and returned to the complainant.

Now it cannot, I think, be disputed that if a person gives a cheque in payment for goods and it is dishonoured and from the circumstances it can be presumed that he must have been aware that the cheque would be dishonoured, so that the failure to meet payment of the cheque was not accidental, he is guilty of cheating under section 420 of the Penal Code.

What then was the evidence from which it could be presumed that the appellant must have known that the cheque would be dishonoured. It was supplied in the clearest possible terms by the evidence of Tan Ngi Ker. It is I think both appropriate and convenient to set out what the learned Magistrate had to say about this evidence.

"The missing link in the Prosecution's case was supplied by the evidence of one Tan Ngi Ker (PW4). He was approached by the Appellant to do business of importing Hong Kong goods. On 31st July, 1962 Tan

was given a document and $10 and taken to the Registry of Companies to register the firm of Chaio Nam Co., doing business at No. 17 Nankin Street, Singapore. No business was ever transacted there by the Appellant and/or Tan. In his evidence Tan said 'I have been cycling past the shop on more than 10 occasions and on each occasion he was never there. Accused pointed shop to me but never brought me there. I have never seen any signboard there.' The day after Chaio Nam Co. was registered, appellant took Tan to the Malayan Bank at South Bridge Road where an account was opened in Tan's name. Appellant handed $500 cash to Tan to be deposited. When they left the Bank Tan was asked to sign 5 to 6 blank cheques. After signing the appellant kept the cheque book. A month later Tan was given $120 by the appellant 'for expenses' and asked to sign 3 or 4 more blank cheques. Tan indentified his signature on the cheques presented to court, including the one dated 14th August 1962."

It is clear that the cheque in question dated the 14th August, 1962, was one of the cheques signed in blank by Tan Ngi Ker at the request of the appellant. Now, if that evidence was accepted by the learned Magistrate it established, in my judgment, beyond any reasonable doubt that the offence of cheating had been committed. The firm of Chaio Nam Co. which never conducted any business was a front for the appellant's activities and Tan Ngi Ker simply a convenient and complacent dummy whose name was used to register the firm. It was the appellant who kept the cheque book and obtained Tan Ngi Ker's signature on the blank cheques and he was obviously fully aware of the state of the account.

At the close of the prosecution case counsel for the appellant submitted there was no case to meet on the grounds, *inter alia*, that the charge was defective and Tan Ngi Ker's evidence inadmissible. The learned Magistrate held that there was *prima facie* case made out against the appellant and on being called on for his defence he elected to remain silent and called no evidence.

On the hearing of the appeal the objection to the admissibility of the evidence of Tan Ngi Ker was abandoned but it was argued that he was an accomplice or at the least an interested party whose evidence required corroboration. I think a more correct method of approach to the matter is to say that it is dangerous to act or convict on the uncorroborated evidence of an accomplice unless absolutely satisfied of its truth and to this, as I understand him, Mr. Marshall assented. The question of whether or not a witness is an accomplice is often a difficult matter to decide and it was discussed by Murray-Aynsley C.J. in *Tan Yook Suan* v. *Regina*[1]. In the present case I am satisfied on the evidence that Tan Ngi Ker was not an accomplice. He had no knowledge whatever of the transaction with which we are concerned. In his evidence he described himself as a crewman who worked on a boat. It is true he signed the cheque in question in blank at the request of the appellant as I have already indicated, which no doubt explains the reason for his arrest. He was released because quite clearly, in my opinion, he could by no possible stretch of the imagination be held in connection with this offence.

As he had no knowledge of this transaction it is difficult to understand how he can be said to be an interested party. His act in signing these cheques in blank was that of a fool, not a knave. His evidence, whether he was an interested witness in the strict sense or not, obviously required the closest scrutiny before being accepted but I can find no reason for saying that it did not receive it.

The learned Magistrate was fully aware of the importance of this evidence for he refers to it as supplying the missing link in the prosecution case. So far as one can judge from the record, Tan Ngi Ker does not appear to have been shaken in cross-examination and it was open to the learned Magistrate, having seen and heard him in the witness box, to accept his evidence which he did.

The charge, in my opinion, was not defective but was properly framed and contained adequate particularisation. In the cases cited before me in argument, no particulars of the dishonest inducement were given in the charges and for that reason they were held to be defective. They are clearly distinguishable from the present case. The particulars of the dishonest inducement here are the deceiving of the complainant into believing that the cheque in question would be honoured and this is set out in the charge.

Under the skilful and astute cross-examination which we have come to expect from Mr. Marshall, the complainant was obviously confused between the terms 'payment being guaranteed' and 'the cheque being honoured'. I am quite satisfied on the evidence, taken as a whole, that the representation was that the cheque would be honoured or met. It is true that the learned Magistrate referred to four assurances given by the appellant. The first that the appellant could not get the money because it was after banking hours was not so much an assurance as an indisputable statement of fact as at the relevant time the Bank was closed. The second that the cheque would be honoured is the substantial representation. The other two, namely, that if the cheque was not honoured the complainant could report the matter to the Police and that on two previous occasions cheques of a similar type were handed to the complainant in exchange for goods and that both

these cheques were honoured, were merely statements to back up and support the representation that the cheque in question would be honoured.

There can, in my opinion, be no room for any possible doubt or confusion about the matter. The complainant himself said that when he was referred to the two previous cheques and that they had been honoured he accepted the appellant's assurance that the cheque (i.e. the one in question) would be honoured. Furthermore, towards the end of the learned Magistrate's Grounds of Decision he says:—

"The appellant and the complainant knew that the transactions were cash transactions and there was a clear representation that the cheque would be met."

The appellant was in no way prejudiced and so far from the learned Magistrate being confused as alleged in the grounds for appeal, I think he showed a comprehensive grasp and appreciation of the position.

There is, in my view, no substance in the other grounds argued on the appeal.

In my judgment, therefore, this appeal must be dismissed and the conviction and sentence are affirmed.

Appeal dismissed.

RE HO KHIAN CHEONG DECD.

[O.C.J. (Ambrose J.) August 10, 1963]

[Singapore — Probate No. 1 of 1963]

Administration—Petition for letters of administration by widow—Caveat by stranger claiming to be lawful daughter and next-of-kin of deceased—Onus on caveator.

Chinese customary marriage—Ceremony appropriate for marrying principal wife confers status of secondary wife if principal wife is living in Singapore at time of ceremony.

A consensual marriage is sufficient to acquire the status of a secondary wife.

Where a Chinese, having a principal wife living in Singapore, goes through a ceremony of marriage with another woman, and such ceremony is appropriate for the purpose of marrying a principal wife according to Chinese custom, both justice and common sense require that the other woman be accorded the status of a secondary wife.

[**Editorial Note:** Attention is drawn to the restrictions imposed on polygamy by section 4 of the Women's Charter, 1961 (Singapore Ordinance No. 18 of 1961) which came into force on 15th September 1961.]

Case referred to:—

(1) *Re Yeow Kian Kee, deceased; Er Gek Cheng* v. *Ho Ying Seng* [1949] M.L.J. 171.

PROBATE.

R. E. Redrup for the petitioner.

Frederick Wu for the caveator.

Ambrose J.: On the 2nd January, 1963, Tay Wang Tee, filed a petition for letters of administration of the estate of Ho Khian Cheong, deceased, claiming to be his lawful widow. Subsequently, Maureen Angela Boudville, filed a caveat claiming to be one of the lawful daughters and next-of-kin of the deceased. As a result, the hearing of the petition was adjourned for certain issues to be decided by the court.

The issues were:

(1) Was the caveator's mother, Quek Boo Lat, married to the deceased in accordance with Chinese custom?

(2) Was the caveator the legitimate child of the deceased by Quek Boo Lat?

The facts were these. Quek Boo Lat and the deceased went through a ceremony of marriage in Singapore in 1940. That ceremony was appropriate for the purpose of marrying a principal wife according to Chinese custom. At the time of the ceremony the deceased had a principal wife in Singapore, namely, Tay Wang Tee, the present petitioner. Quek Boo Lat did not know then that the deceased had a principal wife; and she thought that the ceremony made her the principal wife of the deceased. The deceased and Quek Boo Lat lived and cohabited at 17 Teng Tong Road, Singapore, from 1940 till 1943 when the deceased deserted her. The caveator was born to them on the 13th September, 1941, about a year after their marriage. It was not until after she had been deserted that Quek Boo Lat discovered that the deceased had a principal wife.

It was contended by counsel for the petitioner that the onus was on the caveator to establish that the marriage of Quek Boo Lat and the deceased was valid according to Chinese custom. Counsel conceded that there was a custom amongst many Chinese domiciled in the former Straits Settlements to take more than one principal wife subject to the proviso that they must not be taken in the same place: see *Braddell's Laws of the Straits Settlements*. Vol. I, page 85. It was submitted that in the absence of expert evidence that Chinese custom would permit a Chinese to take two principal wives in the same place the Court could not come to such a conclusion; and that, therefore, the caveator had failed to prove that the marriage of Quek Boo Lat and the deceased was valid according to Chinese custom.

Counsel for the caveator contended that the caveator had merely to prove a consensual marriage. He relied on *In the Estate of Yeow Kian Kee, deceased, Er Gek Cheng* v. *Ho Ying Seng*,[1] He referred to the following passages in the judgment of Murray-Anysley C.J.: